K.D.

OCT 9 PAGE 6

ORIGINAL

RECEIVED
OCT 2 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 81-5169

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

ELIGAAH ARDALLE JACOBS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF FLORIDA

PETITIONER'S REPLY BRIEF

GERALD GILLERMAN, ESQUIRE
Widett, Slater & Goldman, P.C.
Sixty State Street
Boston, Massachusetts 02109
(617) 227-7200

ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

Page

Table of Authorities. ii

I. The issue whether Petitioner's constitutional right to a speedy trial was violated rises to the level entitling Petitioner to relief by this Court. 1

TABLE OF AUTHORITIES

	Page
Cardinale v. Louisiana, 394 U.S. 437 (1969)	1
Davis V. Wainwright, 547 F.2d 261 (5th Cir. 1977)	2
Green Bay Canal Co. v. Patten Paper Co., 172 U.S. 58 (1898)	1,2
Jacobs v. State, 396 So.2d 1113 (Fla. 1981)	2
Klopfer v. North Carolina 386 U.S. 213 (1967)	2
Murray v. Charleston, 96 U.S. 432 (1877)	1,2
New York ex rel. Bryant v. Zimmerman, 278 U.S. 63 (1928)	1
Street v. New York, 394 U.S. 576 (1969)	1
Suggs v. State, 358 So.2d 55 (Fla. App. 1978)	2

No. 81-5169

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

ELIGAAH ARDALLE JACOBS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF FLORIDA

PETITIONER'S REPLY BRIEF

I. THE ISSUE WHETHER PETITIONER'S CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL WAS VIOLATED RISES TO THE LEVEL ENTITLING PETITIONER TO RELIEF BY THIS COURT.

Petitioner agrees that this Court will not decide federal constitutional issues raised for the first time on review of state court decisions. Cardinale v. Louisiana, 394 U.S. 437 (1969). Petitioner contends, however, that a federal question involving his constitutional right to a speedy trial was raised to the level entitling petitioner to relief by this Court.

This Court has long held that no particular form of words or phrases is necessary to assert a claim of federal rights. See Street v. New York, 394 U.S. 576, 584 (1969); New York ex rel. Bryant v. Zimmerman, 278 U.S. 63, 67 (1928); Green Bay & Canal Co. v. Patten Paper Co., 172 U.S. 58, 67 (1898); Murray v. Charleston, 96 U.S. 432, 442 (1877). The test for determining whether a federal question was raised is not whether the record contains an express statement that a federal question was present but whether such rights were claimed in the state court in such a manner as to bring it to the attention of that Court. See Street v. New York, 394 U.S. 576, 584 (1969); Green Bay & Canal Co. v.

Patten Paper Co., 172 U.S. 58, 67-68 (1898); Murray v. Charleston, 96 U.S. 432, 442 (1877).

In cases involving the claim to a speedy trial -- the claim at stake in this case -- merely raising that claim in the state court necessarily invokes federal constitutional issues. Indeed, the Court of Appeal of Florida has held that in such cases the federal constitutional standard must apply to the proceedings. Suggs v. State, 358 So.2d 55, 56 (1978); see Klopfer v. North Carolina, 386 U.S. 213, 222-23 (1967). Thus, by repeatedly raising the issue of his right to a speedy trial, Petitioner brought his federal constitutional right to a speedy trial to the attention of the Florida courts.

The Supreme Court of Florida itself recognized these principles in this very case when the court noted the necessity of applying "a constitutional test of reasonableness...." Jacobs v. State, 396 So.2d 1113, 1116 (1981). The difficulty, of course, is that the court failed to recognize the correct "constitutional test".

Because the Supreme Court of Florida concluded that Petitioner's claims did not violate the Florida Speedy Trial Rule, Respondent contends that no federal question was raised. Respondent has ignored, however, the fact that a delay in the prosecution of an offense which does not violate the Speedy Trial Rule may nevertheless violate Petitioner's constitutional right to a speedy trial and requires application of the Barker test. Suggs v. State, 358 So.2d 55, 56 (Fla. App. 1978).

Respondent cites Davis v. Wainwright, 547 F.2d 261 (5th Cir. 1977), as support for its contention that Petitoner failed to raise a federal question for appellate review. The cited case, however, is inapposite to the facts presented in Petitioner's brief. Unlike Petitioner, Davis never raised in a state court the defense of a speedy trial. Davis v. Wainwright, 547 F.2d 261, 263 (5th Cir. 1977). Petitioner repeatedly raised his right to a speedy trial in the Supreme Court of Florida. Having brought his constitutional right to the attention to the court,

Petitioner, unlike Davis, raised the issue to the level entitling Petitioner to relief by this Court.

The issue raised by Petitioner in the state court goes to the fundamental fairness of the trial. Petitioner's claim that the decision by the Supreme Court of Florida violated his fundamental right to a speedy trial should be reviewed by this Court.

Respectfully submitted,

GERALD GILLERMAN, ESQUIRE
Widett, Slater & Goldman, P.C.
Sixty State Street
Boston, Massachusetts 02109
(617) 227-7200